

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

JONATHAN MANGAN, individually,))
and on behalf of all other))
persons similarly situated,))

Plaintiff,))

v.))

CHRISTIAN COUNTY, MISSOURI,))
by and through its Board of))
County Commissioners, ROY))
MATTHEWS, TOM CHUDOMELKA, and))
BILL BARNETT, in their))
official capacities; and))
STEVE WHITNEY, Sheriff of))
Christian County, in his))
official capacity.))

Defendants.))

Case No. 99-3373-CV-S-6614

BRIEF IN SUPPORT OF
MOTION FOR CLASS CERTIFICATION

COMES NOW the Plaintiff, Jonathan Mangan, by and through the undersigned counsel, and files this brief in support of Plaintiff's Motion for Class Certification pursuant to Rule 23 of the Federal Rules of Civil Procedure.

I. INTRODUCTION

This is a civil action challenging the violation of civil and constitutional rights of persons who are or will be

detained or incarcerated at the Christian County Jail in Ozark, Missouri [hereinafter, "the jail"]. Plaintiff brings this action on his own behalf and on behalf of all others similarly situated pursuant to the Federal Rules of Civil Procedure 23(a) and 23(b)(2). The class for which Plaintiff requests certification is composed of "all. persons who are now or in the future will be incarcerated in the jail." Complaint, Par. 4. The inmates are subject to denial of rights as set forth in the Complaint.

II. DISCUSSION

The prerequisites for a class action are set forth in Rules 23(a) and 23(b) of the Fed. R. Civ. P.. The purpose Rule 23 is to prevent piecemeal litigation and repetitious suits on common claims which result in inconsistent adjudications and in determining res judicata. Donovan v. University of Texas at El Paso, 643 F.2d 1201, 1206-07 (5th Cir. 1981). The trial court has broad discretion in determining whether a class action may be maintained. Shapiro v. Midwest Rubber Reclaiming Co., 626 F.2d 63, 71 (8th Cir. 1980), cert. denied, 449 U.S. 1079, 101 S. Ct. 860, 66 L. Ed. 2d 802 (1981).

With respect to jail conditions litigation, a class action is an "effective weapon for an across-the-board attack

against systematic abuse," Jones v. Diamond, 519 F.2d 1090, 1100 (5th Cir. 1975), partially rev'd on other grounds, 594 F.2d 997 (5th Cir. 1979), partially rev'd on other grounds, 636 F.2d 1364 (5th Cir. 1981) (en banc) (allowing class action suit challenging county jail conditions). It is a "uniquely appropriate" mechanism in civil rights litigation, Pearson v. Townsend, 362 F.Supp. 207, 211 (D.S.C. 1973), and a desirable and "logical way to challenge prison conditions." Inmates of Lycoming Cty. Prison v. Strobe, 79 F.R.D. 228, 231 (M.D. Pa. 1973).

In addition, Rule 23 is to be liberally construed to permit class actions involving systematic abuse. See Jones v. Diamond, 519 F.2d at 1100 (noting "liberal construction of rights class actions"). For jail conditions, a class action is a technique that makes it possible to effectively assert rights that might otherwise go unprotected. Neely v. United States, 546 F.2d 1059, 1071 (3d Cir. 1976), reh'g denied, 554 F.2d 114 (3d Cir. 1976).

A. THE REQUIREMENTS OF RULE 23(a) ARE SATISFIED IN THIS CASE.

Rule 23(a), describes the prerequisites to a class action. All prerequisites of Rule 23(a) are satisfied in this case.

1. The class is so numerous that joinder of all members is impracticable.

Rule 23(a)(1) provides a numerosity requirement which requires that the class is so numerous that joinder of all members of the class would be impractical.. This does not require a showing that joinder is impossible. Jackson v. Rapps, 132 F.R.D. 226, 230 (W.D.Mo. 1990). A showing that joinder of all members of the class would be difficult or inconvenient is sufficient. Id. There is no bright line numerical test by which a court can determine when numerosity is satisfied. Ad Hoc Committee v. City of St. Louis, 143 F.R.D. 216, 220 (E.D.Mo. 1992) citing Boyd v. Ozark Air Lines, Inc., 568 F.2d 50, 54 (8th Cir. 1977).

As set forth in the Complaint, the jail is presently used to confine both male and female adult pre-trial and post trial detainees, and convicted and sentenced inmates of Christian County, as well as state prisoners pending their transfer to other facilities. Complaint Par. 13. The population of the jail changes daily as inmates are detained, committed, transferred, or released. Complaint Par. 5. On average, there may be between 22-26 inmates housed at the jail at any one time. Over the course of a year, some inmates may be confined less than one week at the jail; some inmates

may be confined several weeks at the jail; and some inmates may be confined several months at the jail. Those who are housed at the jail and the number of those who are housed at the jail changes daily, and in a given year, it is estimated that between 1500 to 2000 people are incarcerated at the jail. Complaint Par. 14.

It is clear that the class of persons described by the Plaintiff meets the numerosity requirements of Rule 23(a)(1). See Evans v. United States Pipe & Foundry Co., 696 F.2d 925, 930 (11th Cir. 1983) (holding that any doubts should be resolved in favor of finding numerosity). The class size in this case is plainly sufficient. In fact, one court found that "as few as 25-30 class members should raise a presumption that joinder would be impracticable." E.E.O.C. v. Printing Indus., 92 F.R.D. 51, 53 (D.D.C. 1981).

In a jail setting, such as the Christian County Jail, there is an indeterminate number of individuals who will become class members. Since the class is indeterminate, joinder is a practical impossibility. See e.g., Johnson v. Montgomery Cty. Sheriff's Dept., 99 F.R.D. 562, 565 (M.D.Ala. 1983) ("when a putative class includes future [members] joinder is impossible"), decided on the merits, 604 F.Supp. 1346 (M.D.Ala.1985), enforced, 766 F.Supp. 1052 (M.D.Ala. 1990); Moncravie v. Dennis, 89 F.R.D. 440, 442 (W.D.Ark.

1981) (allowing class of 25 members when it was apparent that by the time the case came to trial, approximately 429 present and additional inmates would have spent time in jail).

The class in this case consists of perhaps hundreds or thousands of present and future members -- joinder is simply not practicable.

2. There are questions of law and fact common to the class.

Rule 23(a)(2) provides the commonality requirement which requires that there must be questions of law or fact that are common to the class members. The commonality requirement does not require every question be common to the class, but merely that one or more significant questions of law or fact be common to the class. TBK Partners v. Chomeau, 104 F.R.D. 127, 130 (E.D.Mo. 1985). Commonality is usually satisfied if class members' claims derive from a common nucleus of operative facts. *Id.*

The commonality requirement is also readily satisfied in this case. Essentially all the inmates at the jail are subjected to the same conditions, the same effects of overcrowding, and the same policies, practices, and procedures of the Defendants. Furthermore, the same constitutional standards would apply to the various issues

relating to the constitutionality of the conditions of confinement and the policies and practices of Defendants. Thus, there are questions of law or fact that are common to the class.

3. The claims of the named Plaintiff are typical of those of the class.

Rule 23(a)(3) provides the typicality requirement which requires that the claims or defenses of the representative parties are typical of the claims or defenses of the class. Typicality is satisfied if the plaintiffs suffer the same sort of injuries and possess sufficient similarity of the interests to make the proper class representatives. Ad Hoc, 143 F.R.D. at 220. Factual variations among purported class members will not negate typicality. Kuenz v. Goodyear Tire & Rubber Co., 104 F.R.D. 474, 477 (E.D.Mo. 1985).

In the present case, there are no fundamental factual differences between the circumstances of the representative Plaintiff and those of the class. As the Complaint shows, the named Plaintiff, like the class of all current and future inmates of the jail, has been subject to the same unconstitutional violations and has shared legal issues with the class. The named Plaintiff, like the class members, challenges the conditions of his confinement as violative of

the First, Fifth, Eighth and Fourteenth Amendments to the United States Constitution. Thus, a "sufficient nexus is established [because] the claims ... arise from the same event or pattern or practice and are based on the same legal theory." Kronberg v. Carnival Cruise Lines, Inc., 741 F.2d 1332, 1337 (11th Cir. 1984), cert. denied, 470 U.S. 1004, 105 S. Ct. 1357, 84 L. Ed. 2d 379 (1985).

4. The named plaintiff will fairly and adequately protect the interest of the class.

Rule 23(a)(4) provides an adequacy requirement which requires that the class representative will provide fair and adequate representation of the class. The adequacy requirement is essentially satisfied if there are no antagonistic interests between the named Plaintiffs and the class members, and the class will be adequately represented by counsel. Linguist v. Bowen, 633 F.Supp. 846, 859 (W.D.Mo. 1986). Additionally, the class representative's claims must emanate from the same legal and/or remedial theories as the persons he seeks to represent. Ellis v. O'Hara, 105 F.R.D. 556, 563 (E.D.Mo. 1985).

In this case, the named representative shares common interests with unnamed Plaintiffs because they all have been or will be subjected to the same challenged conditions,

policies, practices, and procedures. There is no antagonism within the class because all class members will benefit from injunctive relief which will protect them from unconstitutional deprivations of rights.

Plaintiff's counsel is qualified to competently represent the class. Paul W. Rebein of the firm Shook, Hardy & Bacon, L.L.P., has seven years of experience in litigating complex federal cases, including class actions challenging the conditions in prisons and jails. Specifically, Mr. Rebein was class counsel in two successful class actions involving overcrowding and conditions of confinement, Varvera v. Cross, 93-4477-CV-C-SOW, and Dagley v. Miller County, 95-4206-CV-C-5. Eddie M. Lorenzo, Legal Director of the American Civil Liberties Union Foundation of Kansas and Western Missouri, has been actively engaged in the practice of law in Missouri for five years, having participated in well over 300 bench trials and several jury trials as a criminal defense attorney.

Accordingly, the named Plaintiff has demonstrated that he is an adequate representative of the claims of absent class members.

For the above reasons, the requirements of Rule 23(a) are met.

B. THE REQUIREMENTS OF RULE 23(b) ARE SATISFIED IN THIS CASE.

Certification of a class action under Rule 23(b) (2) was **intended** primarily to facilitate civil rights class actions. Penson v. Terminal Transport Co., Inc., 634 F.2d 989, 993 (11th Cir. 1981). It is not uncommon for class actions to be certified under Rule 23(b)(2) to challenge prison and jail conditions. See Jones v. Diamond, supra; Inmates of Lycoming Cty. Prison v. Strobe, supra; Pearson v. Townsend, supra.

Rule 23(b)(2) is applicable where the defendants have acted or refused to act on grounds generally applicable to the class, justifying relief with respect to the class as a whole. In this case, the Defendants, by their policies, practices, and procedures regarding the Christian County Jail, have acted on grounds clearly applicable to the class. As such, this court should certify the class action under Rule 23(b) (2).

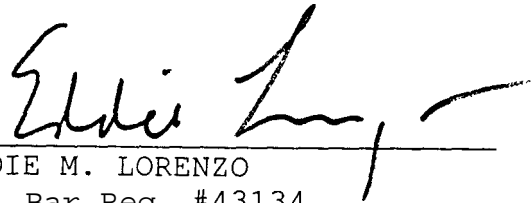
III. CONCLUSION

The issue of class certification in this case is "plain enough from the pleadings" to determine that the interests of class members are encompassed within the named Plaintiff's claims. General Tel Co. of Southwest v. Falcon, 457 U.S. 147, 160 (1982). Plaintiff submits that the requirements of Rule

23 are satisfied and that class certification should be ordered.

WHEREFORE, Plaintiff moves this Honorable Court for its order certifying the above referenced case as a class action under Rule 23 of the Federal Rules of Civil Procedure, and for any further relief this Court deems just and proper under the circumstances.

Respectfully submitted,



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